

701—231.6(423) Prescription drugs, medical devices, oxygen, and insulin. Sales of prescription drugs and medical devices as defined in subrule 231.6(1) and dispensed for human use or consumption in accordance with subrules 231.6(3) and 231.6(4) shall be exempt from sales tax. Rentals of medical devices as defined in subrule 231.6(1) are also exempt from tax. The sales price from the sales of any oxygen or insulin purchased for human use or consumption (whether or not the oxygen or insulin is prescribed) is exempt from tax.

231.6(1) Definitions.

“Medical device” means durable medical equipment or mobility enhancing equipment intended to be prescribed by a practitioner for human use. See rule 701—231.8(423) for definitions of those terms.

“Prescription drug” means a drug intended to be dispensed to an ultimate user pursuant to a prescription drug order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner, or oxygen or insulin dispensed for human consumption with or without a prescription drug order or medication order.

“Ultimate user” means any individual who has lawfully obtained and possesses a prescription drug or medical device for the individual’s own use or for the use of a member of the individual’s household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed or prescribed. The phrase does not include any entity created by law, such as a corporation or partnership.

231.6(2) Tax exemption. The sale of a prescription drug is exempt from tax only if the drug is intended to be prescribed or dispensed to an ultimate user. A drug is intended to be prescribed or dispensed to an ultimate user only if the drug is obtained by or supplied or administered to an ultimate user for placement on or in the ultimate user’s body.

EXAMPLE A: A physician prescribes a tranquilizer for a patient who is chronically nervous. The patient uses the prescription to purchase the tranquilizer at a pharmacy. The purchase is exempt from tax.

For purposes of this subrule, any drug prescribed in writing by a licensed physician, surgeon, osteopath, osteopathic physician or surgeon, or other person authorized by law to an ultimate user for human use or consumption shall be deemed a drug exempt from tax if a prescription is required or permitted under Iowa state or federal law.

EXAMPLE B: A common painkiller is sold over the counter in doses of 200 milligrams per tablet. In doses of 600 milligrams per tablet, federal law requires a prescription before the drug can be dispensed. Sales of 600 milligram tablets by prescription are exempt from tax.

EXAMPLE C: A federal law permits but does not require the painkiller mentioned in Example B to be prescribed by a practitioner in dosages of 200 milligrams per tablet. A practitioner might prescribe the painkiller in the over-the-counter dosage, for example, to impress upon a patient the importance of taking the drug. Sales of 200 milligram tablets by prescription are exempt from tax.

See rules 701—231.7(423) and 701—231.8(423) for examples of medical devices sold without a prescription but exempt from tax.

231.6(3) Persons authorized to dispense prescription drugs or prescription devices. In order for a prescription drug or device to qualify for an exemption, it must be dispensed by one of the following persons:

a. Any store or other place of business where prescription drugs are compounded, dispensed or sold by a person holding a license to practice pharmacy in Iowa, and where prescription orders for prescription drugs or devices are received or processed in accordance with pharmacy laws.

b. Persons licensed by the state board of medical examiners to practice medicine or surgery in Iowa.

c. Persons licensed by the state board of medical examiners to practice osteopathic medicine or surgery in Iowa.

d. Persons licensed by the state board of podiatry examiners to engage in the practice of podiatry in Iowa.

e. Persons licensed by the state board of dental examiners to practice dentistry in Iowa.

f. Persons licensed by the state board of optometry examiners as therapeutically certified optometrists.

g. Persons licensed by the state board of chiropractic examiners to practice chiropractic in Iowa, when dispensing in accordance with Iowa Code chapter 151.

h. Persons licensed as advanced registered nurse practitioners by the board of nursing when prescribing and dispensing in accordance with Iowa Code subsection 147.107(8).

i. Any other person authorized under Iowa law to dispense prescription drugs or devices in this state.

j. Any person licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs or devices.

231.6(4) *Disposition of prescription drugs and devices.* Prescription drugs or devices may be dispensed either directly from one of the persons licensed in 231.6(3) who may also prescribe drugs or devices or by a pharmacist upon receipt of a prescription from one of the persons licensed to prescribe. A prescription received by a licensed pharmacist from one of the persons licensed in 231.6(3) who may also prescribe drugs or devices shall be sufficient evidence that a drug or device is exempt from sales tax. When a person who prescribes a drug or device is also the dispenser, the drug or device will not require a prescription by such person, but the drug or device must be recorded as if a prescription would have been issued or required. If this condition is met, the sales price from the sale of the drug or device shall be exempt from sales tax.

231.6(5) *Others required to collect sales tax.* Any person other than those who are allowed to dispense drugs or devices under 231.6(3) shall be required to collect sales tax on any prescription drugs or devices.

231.6(6) *Prescription drugs and devices purchased by hospitals for resale.* This subrule applies to for-profit hospitals only. Hospitals have purchased prescription drugs or devices for resale to patients and not for use or consumption in providing hospital services only if the following circumstances exist: (a) the drug or device is actually transferred to the patient; (b) the drug or device is transferred in a form or quantity capable of a fixed or definite price value; (c) the hospital and the patient intend the transfer to be a sale; and (d) the sale is evidenced in the patient's bill by a separate charge for the identifiable drug or device. Reference rule 701—18.31(422,423) for a discussion generally of sales for resale by persons performing a service. Also reference rule 701—18.59(422,423) for the exemption applicable to all purchases of goods and services by a nonprofit hospital licensed under Iowa Code chapter 135B.

EXAMPLE A: A hospital purchases a bone saw blade and uses the blade to cut the bone of patient X during hip replacement surgery. This dulls the blade to the point that the blade cannot be used again and is discarded. The hospital bills patient X for "one bone saw blade—\$30." In spite of the separate charge for an identifiable piece of property, the hospital did not purchase the bone saw blade for resale. The blade was used up by the hospital, not transferred to the ownership of X. Since there was no transfer, there was no sale, thus no purchase for resale.

EXAMPLE B: A hospital buys lotion for use in massages given to patients by a nurse's aide. In spite of the fact that one can argue that a transfer of ownership of the lotion from hospital to patient occurred, the lotion was not purchased for resale. No real intent to sell the lotion to patients ever existed; the lotion was not transferred to patients in a quantity capable of a definite price value; and there is no separate charge for the lotion.

A hospital's purchase of a prescription drug for purposes other than resale will still be exempt from tax if a drug is intended to be prescribed to an ultimate user and the hospital's use of the drug is otherwise exempt under 231.6(1).

This rule is intended to implement 2005 Iowa Code Supplement subsection 423.3(60).